

PILLSBURY WINTHROP SHAW PITTMAN LLP
DAVID J. TSAI (SBN 244479)
david.tsai@pillsburylaw.com
ALEKZANDIR MORTON (SBN 319241)
alekzandir.morton@pillsburylaw.com
SURUI QU (SBN 332105)
surui.qu@pillsburylaw.com
Four Embarcadero Center, 22nd Floor
San Francisco, CA 94111-5998
Telephone: 415.983.1000
Facsimile: 415.983.1200

Attorneys for Plaintiff
Wiwynn Corporation

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

WIWYNN CORPORATION,

Plaintiff,

vs.

X Corp.,

Defendant.

Case No. 24-cv-05322

**COMPLAINT FOR BREACH OF
CONTRACT AND PROMISSORY
ESTOPPEL**

DEMAND FOR JURY TRIAL

Plaintiff Wiwynn Corporation (“Plaintiff” or “Wiwynn”) brings this Complaint against Defendant X Corp. (“Defendant” or “X Corp.”) and alleges as follows:

NATURE OF ACTION

1. This is an action for damages arising out of X Corp.’s failure to compensate Wiwynn for custom components ordered by Wiwynn with X Corp.’s approval, which were to be used in connection with Wiwynn’s manufacture of custom products for X Corp.

PARTIES

2. Plaintiff Wiwynn Corporation is a corporation organized and existing under the laws of Taiwan, with its principal place of business located at 8F, 90, Sec.1, Xintai 5th Road, Xizhi District, New Taipei City 22102, Taiwan.

4. This Court has diversity jurisdiction under 28 U.S.C. sections 1332(a)(1), 1332(a)((2) and 2201 because there is complete diversity between Wiwynn and X Corp. and because the amount in controversy exceeds \$75,000.

5. This Court has personal jurisdiction over X Corp. pursuant to a binding jurisdiction clause within an agreement giving rise to the present dispute that was negotiated and executed by the parties, which states that “[a]ny legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in the Northern District of California and the parties hereby irrevocably consent to the personal jurisdiction and venue therein.” Further, this Court has personal jurisdiction over X Corp. because X Corp. has its principal place of business in this District, and, at all relevant times, has conducted commercial activities within the State of California that are substantial, continuous, and systematic.

6. Venue is proper under 28 U.S.C. § 1391(b) and based on X Corp.'s express prior consent in the agreement to the venue of this Court. Further, venue is proper in this District because X Corp. resides in this District and is subject to personal jurisdiction here, and because a substantial part of the events, acts and omissions giving rise to the claims occurred in this District.

7. Wiwynn is an innovative cloud IT infrastructure provider of high-quality computing and storage solutions, plus rack solutions for leading data centers. With the capacity to design, assemble, customize, test, and validate a blend of products all the way up to L11 rack integration services—from the board to the system to the complete rack—Wiwynn has a business model to work directly with customers to design and deliver custom solutions tailored to their individual needs.

8. On September 24, 2014, recognizing the value that Wiwynn's cloud IT infrastructure products would bring, X Corp. (then known as Twitter, Inc.) contracted with Wiwynn and entered into

1 a Master Purchase Agreement. A true and correct copy of the Master Purchase Agreement is attached
2 hereto as **Exhibit A**.

3 9. Pursuant to the terms of the Master Purchase Agreement, effective as of September 24,
4 2014, between Twitter, Inc., for itself and the benefit of its subsidiaries and affiliates, and Wiwynn
5 Corporation (“Master Purchase Agreement”), Twitter, Inc.—now X Corp.—provided to Wiwynn
6 forecast orders for the products it intended to purchase. In accordance with the Master Purchase
7 Agreement, after receiving these forecasts from X Corp., Wiwynn prepared lists of custom
8 components which it would need to purchase in order to fulfill X Corp.’s forecast requirements. The
9 Master Purchase Agreement required Wiwynn to submit these lists to X Corp. for approval before it
10 could purchase the custom components.

11 10. In addition to approving the purchase of the custom components, X Corp. would
12 occasionally direct Wiwynn to purchase additional, non-custom components to be used in the
13 manufacture of products included in X Corp.’s forecasts. When directing Wiwynn to purchase these
14 non-custom components, X Corp. explicitly approved such purposes in writing and assumed liability
15 for the goods.

16 11. During the course of dealing of the parties for nearly eight years, X Corp. understood
17 that by approving the purchase of the needed components, X Corp. was assuming liability for these
18 components in the event that the components were not used in the manufacture of products forecasted
19 by X Corp.

20 12. In its email correspondences with X Corp., Wiwynn informed X Corp. that it would
21 not begin component procurement needed to fulfill X Corp.’s orders under the Master Purchase
22 Agreement until X Corp. approved its list of custom components.

23 13. In addition, Wiwynn explicitly informed X Corp. that Wiwynn would not procure non-
24 custom components without an express written acknowledgement from X Corp. that X Corp. would
25 assume liability for those components. Again and again, X Corp. approved these requests in writing.

26 14. The Parties followed this general course of conduct for approximately eight years
27 without issue. Prior to November 2022, X Corp. placed orders and made full payments for all of the
28

1 products made from the components which Wiwynn purchased only after X Corp. confirmed to
2 Wiwynn that it would assume liability for those components.

3 15. Beginning in November 2022, X Corp. abruptly stopped making any payments to
4 Wiwynn—including for delivered finished products—and failed to respond to multiple
5 communications from Wiwynn inquiring about and demanding the past-due payments for delivered
6 finished products.

7 16. At this time, Wiwynn had procured and paid for, at the direction and approval of X
8 Corp., approximately \$120 million of custom components and non-custom components (which X
9 Corp. had expressly authorized Wiwynn to purchase in writing) to manufacture the products forecasted
10 and/or ordered by X Corp. However, at this time, X Corp. also stopped providing any additional
11 instructions for Wiwynn to manufacture or deliver any finished products to X Corp. To no avail,
12 Wiwynn made many inquiries to X Corp. as to how X Corp. would resolve its liability for these unused
13 components Wiwynn purchased to fulfill X Corp. orders.

14 17. Indeed, since November 2022, Wiwynn has made a number of attempts to
15 communicate with X Corp. by phone and email correspondences to resolve its outstanding liability.
16 However, to date, X Corp. has refused to accept responsibility for the unused components.

17 18. In addition to its attempts to resolve the issue of its excess components with X Corp.,
18 Wiwynn immediately attempted to mitigate its damages through various means, including but not
19 limited to cancelling approximately \$40 million worth of components that had not yet been delivered
20 to Wiwynn, attempting to sell the delivered but unused components to other third parties, attempting
21 to use the unused components in manufacturing products for other Wiwynn customers, and attempting
22 to repurpose the unused components for Wiwynn's use to absorb the relevant costs itself. Wiwynn
23 has been able to recoup approximately \$19 million by re-selling and/or repurposing the unused
24 components that were intended to be used in products for X Corp. However, due to the custom nature
25 of the components, Wiwynn has been and continues to be limited in its ability to resell and reuse a
26 substantial amount of components—which hold a significant total value—despite Wiwynn's best
27 efforts.

1 custom components needed to produce the forecasted products, and submitted this list to X Corp. for
 2 their approval to be purchased by Wiwynn. Only after Wiwynn received approval from X Corp. would
 3 Wiwynn begin purchasing the components. X Corp. is well-aware of this because X Corp. drafted the
 4 Master Purchase Agreement, and explicitly approved Wiwynn's purchase of the custom and approved
 5 components.

6 30. Because of its reliance on X Corp's promise, Wiwynn has been injured at least in the
 7 amount of \$61 million with interest at the legal rate on that amount from the due date of each of the
 8 relevant invoices and costs.

9 **COUNT III**

10 **(Breach of the Covenant of Good Faith and Fair Dealing Against X Corp.)**

11 31. Wiwynn incorporates by reference and realleges paragraphs 1-30 above of this
 12 Complaint as if fully set forth herein.

13 32. X Corp. failed to work with Wiwynn in good faith for over ten months when it
 14 repeatedly refused to communicate with Wiwynn to resolve its outstanding liability, in breach of the
 15 implied covenant of good faith and fair dealing.

16 33. Without limitation, X Corp. breached the covenant of good faith and fair dealing by
 17 failing to:

18 a. place purchase orders with Wiwynn for products Wiwynn purchased to
 19 manufacture components for X-Corp., despite X Corp.'s prior approval of
 20 Wiwynn's purchase of those components; and

21 b. advise Wiwynn that X Corp. was terminating the Master Purchase Agreement.

22 34. X Corp.'s improper objective in so conducting itself was, on information and belief, at
 23 all times to delay, and if possible in whole or in part avoid, payment of Wiwynn's legitimate claims.

24 35. As a direct and proximate result of X Corp.'s conduct, Wiwynn has suffered, and
 25 continues to suffer, damages in an amount to be determined at trial, but no less than an amount in
 26 excess of \$61 million with interest at the legal rate on that amount from the due date of each of the
 27 relevant invoices and costs.

PRAYER FOR RELIEF

WHEREFORE, Wiwynn respectfully prays for judgment and relief as follows:

- A. The Court award Wiwynn damages in amount to be determined at trial, but no less than \$61 million;
- B. The Court award Wiwynn its costs of suit and reasonable attorneys' fees incurred in this action;
- C. The Court award pre-judgment and post-judgment interest on all damages awarded; and
- D. The Court award such other relief as the Court may deem just and proper.

JURY DEMAND

Wiwynn demands a trial by jury, pursuant to Fed. R. Civ. P. 38, on all claims set forth in the Complaint and all other triable issues.

Dated: August 16, 2024

Respectfully submitted,

PILLSBURY WINTHROP SHAW PITTMAN LLP

/s/ David J. Tsai
David J. Tsai

Attorneys for Plaintiff
Wiwynn Corporation